ity.[10] There being no dispute as to the title, the objection to equity's taking immediate jurisdiction is removed. Indeed, even where title to land was in dispute equity might conceivably have decided the rights of the parties without a previous trial at law; but equity from early times has consistently refused to do so, preferring to leave the parties to prove their titles before a jury.

EXTRA-TERRITORIAL EFFECT OF ADOPTION. — Adoption is the creation of the relationship of parent and child between strangers in blood.[1] It is not a common-law right, but comes from the civil law, and has gradually been introduced into the statutes of several states in this country. Following the usual law as to statuses, jurisdiction to create it depends on domicil. A valid decree of adoption can be given by the courts of the state where both parties are domiciled, but not by a state where neither is domiciled, and in this respect it differs from the creation of the marital status. If the parties have separate domicils, that of the child probably has jurisdiction, at least, if the adopting parent does the necessary acts therein,[2] although the argument that, as in divorce, a state in which either party is domiciled can give a valid decree fails to distinguish between the creation of a status and its destruction.[3]

Granting that a valid adoption has been consummated, what is its effect on the succession to property in another state? It has been said that where by the law of the domicil a person is the "heir" and "child" of another, the state with jurisdiction to determine the status having so declared, the former's standing as heir must everywhere be recognized, and that, if the latter dies intestate leaving property in another state, by whose law it goes to the heir, the former is entitled.[4] This assumes that status alone decides succession, overlooking that succession involves also a matter of description.[5] The descent of realty is governed by the *lex rei sitæ*.[6] England does not say that English land shall succeed to whomever is declared heir by foreign law, but that it shall go to the eldest son born in lawful wedlock. A foreigner's natural son, legitimated through subsequent marriage by the law of his domicil, is not, therefore, the heir of English land.[7] Similarly, a foreigner's adopted son is not the heir of land in a state which knows nothing of adoption, not because he is not heir in the state of domicil, but for the reason that he does not fulfill the description of the person to whom the *lex rei sitæ* says land shall descend.

In order, therefore, to determine the rights of a foreigner's adopted child, it is essential to ascertain whether adopted children are heirs in the state of the situs.[5] If statutes of adoption in that state say nothing about inheritance, it may be argued that the status is to be interpreted in the light of

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[10] Blondell *v.* Consolidated Gas Co., 89 Md 732; Boston & Maine R. R. *v.* Sullivan, 177 Mass. 230; Warren Mills *v.* New Orleans Seed Co., 65 Miss. 391; Goodson *v.* Richardson, 9 Ch. App. 221.

[1] Thus differing from legitimation which presupposes a natural relation. 3 Beale, Cas. Confl. L., 526.

[2] Van Matre *v.* Sankey, 148 Ill. 536. *Contra*, Foster *v.* Waterman, 124 Mass. 592.

[3] See 20 HARV. L. REV. 400. *Contra*, Miner, Confl. L., § 101.

[4] Lord Brougham, in Birtwhistle *v.* Vardill, 2 Cl. & F. 571, 582, 584.

[5] Story, Confl. L., 8 ed., 142 (a).

[6] Van Matre *v.* Sankey, *supra*.

[7] Birtwhistle *v.* Vardill, 7 Cl. & F. 895.

Roman law, where it originated; and by which an adopted child seems to have gained the inheritable capacity of a blood relation.[8] But the better view appears to be that, as adoption is distinctly in derogation of the common law, and the common-law rights of other relatives, the statutes must be strictly construed and the child given inheritable capacity only when there is an express direction to that effect.[9] A foreigner's adopted child must also be denied capacity if, while recognizing the right of inheritance of adopted children, the statutes apply, or are construed to apply, only to adoption proceedings provided by that state. In a recent case succession to land was denied in the state of the situs, where the statute required acknowledgment and registration in the probate court as the act of adoption.[10] *Brown* v. *Finley*, 47 So. 577 (Ala.). As the law of the domicil and of the situs concurred in allowing adopted children to inherit, the result seems only to be justified on a needlessly narrow construction of the statute.[11]

RECEIVERS' CERTIFICATES. — Since the decision in the leading case of *Meyer* v. *Johnston*,[1] it is undoubted law that, when it is necessary for the preservation of the property, railroad receivers have power to issue, with the consent of a court of chancery, receivers' certificates to become a first lien on the property even against the will of the mortgagees whose priority is thus divested. This practice may be defended on the theory that the court, having obtained control of the *res*, must for the protection of all parties interested see that it does not diminish in value.[2] The courts, however, have not limited the issue of certificates to that actually needed for the preservation of the property, but have extended the doctrine of *Meyer* v. *Johnston* until receivers have been given power to issue certificates for almost any purpose. As the authorities now stand, certificates are issued under the pretense of preservation to complete work already begun,[3] to buy new rolling stock,[4] and indeed some cases have gone so far as to allow certificates to be issued to pay off wages accrued before the receiver was appointed, at the cost of preferring unsecured to secured creditors.[5] Those courts which have gone to this extent, groping for a satisfactory reason upon which to base their decisions, have drawn an unwarranted analogy to the doctrine of salvage in admiralty law.

This practice should certainly not be extended, for the power of a court of chancery to divest the lien of prior encumbrancers without their consent is difficult to defend upon any sound principle of legal reasoning. The undertaking of new enterprises should at any rate be no justification. It is certain that a railroad upon finding itself in distress could not prefer those coming

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[8] Markover *v.* Krauss, 132 Ind. 294. See Hunter, Rom. Law, 3 ed., 203–4.

[9] Keegan *v.* Geraghty, 101 Ill. 26. It is on this principle that where the right to inherit from the parent is given, the child cannot inherit from other relatives of the parent unless the statutes so provide. *Cf.* N. Y. Life Ins., etc., Co. *v.* Viele, 161 N. Y. 11.

[10] Ala. Civ. Code, 1907, § 5202.

[11] Ross *v.* Ross, 129 Mass. 243; Gray *v.* Holmes, 57 Kan. 217.

[1] 53 Ala. 237.

[2] Wallace *v.* Loomis, 97 U. S. 146.

[3] Bank of Montreal *v.* R. R. Co., 48 Ia. 518.

[4] Miltenberger *v.* Logansport R. R. Co., 106 U. S. 286.

[5] Union Trust Co. *v.* Illinois Midland R. R. Co., 117 U. S. 434; Miltenberger *v.* Logansport R. R. Co., *supra*.